

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5281 OF 2010

DENNY @ JOHNY ALEX . . . APPELLANT(S)

VERSUS

STATE OF KERALA & ANR . . . RESPONDENT(S)

CIVIL APPEAL NO.5280 OF 2010

O R D E R

1. Both, the appellant-claimant and the State are in appeal against the order of the High Court of Kerala dated 22.12.2009 by which the land acquisition compensation awardable to the claimant-land owner has been enhanced. Such enhancement has been made by the High Court under the two heads. The first is with regard to the 'valuation of the land' and the second is with regard to 'injurious affection'.

2. The appellant-claimant is the owner of a private island measuring 4 acres. A stretch of land measuring 37.609 cents was acquired under the provisions of Land

Acquisition Act, 1894 (for short, "the Act") for the purposes of construction of a railway line to provide a railway link between an International Container Transshipment Terminal and the existing railway network. The Land Acquisition Officer (for short, "the LAO") awarded compensation at the rate of Rs.1,72,406/- per Are (i.e. 1 Are = 2.47 cents).

3. The LAO did not award any compensation under the head "Injurious Affection". The Reference Court enhanced the compensation so far as valuation of land is concerned to Rs.2,93,090/- per Are. So far as injurious affection is concerned, the Reference Court awarded a lump-sum amount of Rs.10,00,000/- as compensation. The said compensation for injurious affection is naturally in relation to the remaining/unacquired land.

4. In appeal, the High Court while enhancing the compensation for the acquisition

to Rs.8,64,850/- per Are (Rs.3,50,000/- per cent), also awarded compensation for injurious affection at the rate of 10% of the said value for the unacquired land measuring 147.87 Are as per Mahazar (Exhibit-R-2). The total amount on the aforesaid basis of computation under the head of Injurious Affection was worked out at Rs.1,28,67,050/- out of which an amount equivalent to 35% was deducted determining the compensation awardable at Rs.83,63,582.50. Aggrieved by the aforesaid exercise of the High Court, both the State and the appellant-claimant are in appeal.

5. We have heard the learned counsels for the parties and have considered the materials on record as evident from a reading of the judgment of the Reference Court as well as the High Court.

6. Insofar as the valuation of the land is concerned, we find that the claim of appellant-claimant before us is on the basis of comparable sale-deeds exhibited as Exhibits

A-6 and A-7, wherein the transaction value is Rs.10,00,000/- per cent and Rs.8,00,000/- per cent (approximately).

7. We have considered the nature and character of the land covered by Exhibits A-6 and A-7 which facts are available in the order of the Reference Court. The land covered by Exhibits A-6 and A-7 had housed a regular island resort with all modern amenities whereas the acquired land did not have any electricity, telephone or effective means of communication. In fact the other exemplars relied by the claimants, namely, A-8, A-9 and A-10, in our considered view, would have more relevance so far as the acquired land is concerned though the finding of the High Court is otherwise. However, as we find that the High Court on a cumulative consideration of all the aforesaid exemplars and other documents on record, had taken the view that compensation at the rate of Rs.3,50,000/- per cent would be just and adequate we are not

inclined to take a different view on the above matter. We therefore affirm the order of the High Court insofar as compensation for the acquired land at the rate of Rs.3,50,000/- per cent is concerned.

8. This will bring the Court a consideration of the compensation awardable under the head "Injurious affection". The extent of the unacquired land i.e. 147.87 Are has been proved by the Mahazar (Exhibit-R-2). Taking into account the character of the unacquired land and its potential, if the High Court had thought it proper to determine its value at the rate of 10% of the valuation allowable for the acquired land, we do not find any palpable error in the said view taken by the High Court. However, what we have noticed is that after arriving at a figure of Rs.1,28,67,050 on the aforesaid basis, the High Court had deducted 35% of the said amount and reduced the compensation under the head of Injurious Affection to Rs.83,63,582.50. In

spite of a close scrutiny of the entire materials on record and the order of the High Court, we do not find any basis for the aforesaid deduction of 35% as made by the High Court. It is therefore our considered view that the said part of the High Court's order i.e. deduction of 35% from the total amount of Rs.1,28,67,050/- would require our interference. We accordingly interfere and set aside the aforesaid part of the order. The amount to which the claimant would now be entitled to compensation under the head "Injurious Affection" is Rs.1,28,67,050. We accordingly dispose of both these appeals with the aforesaid modification of the order of the High Court.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
FEBRUARY 11, 2016

ITEM NO.105

COURT NO.7

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5281/2010

DENNY @ JOHNY ALEX

Appellant(s)

VERSUS

STATE OF KERALA & ANR

Respondent(s)

(with office report for direction)

WITH

C.A. No. 5280/2010

(With Office Report for Direction)

Date : 11/02/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. Mathai M.paikaday, Sr. Adv.
Mr. K. Ramesh, Adv.
Mr. Shishir Pinaki, Adv.
Mr. Anas Shamnad, Adv.
Mr. K. Rajeev, Adv.

Mr. G. Prakash, Adv.

For Respondent(s) Mr. Amit Sharma, Adv.
Mr. S.N. Terdal, Adv.
For Mr. Arvind Kumar Sharma, Adv.

Ms. Liz Mathew, Adv.

Mr. M.F. Philip, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stand disposed of.

(Neetu Khajuria)

(Asha Soni)

Sr.P.A.

Court Master

(Signed order is placed on the file.)